

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal No.727 of 2005

In
Notice of Motion No.1800 of 2005
In
Suit No.2949 of 2004

Ramjeet Kadedin Sharma. .. Appellant
(Orig. Deft.No.2)
v/s.
Smt.Sushma Shriprakash Singh & anr. .. Respondents
(No.1 Orig.Plff.)
(No.2 Orig.Deft.No.1)

Mr.S.S.Kulkarni for appellant.

Mr.J.G.Shukla for res.No.1.

**CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.**

DATE : 13th September 2005

P.C. :

1. Heard Mr.Kulkarni in support of this Appeal. Mr.Shukla appears for respondent No.1.

2. This Appeal seeks to challenge the order dated 7th July 2005 passed by a learned Single Judge on a Notice of motion taken out by defendant No.2 (the appellant herein) in the Summary Suit praying that the proceedings of the Summary Suit be stayed till the disposal of the Complaint filed by the plaintiff (respondent No.1 herein) under Section 138 of the Negotiable Instruments Act. The Motion was rejected by the learned

Single Judge by giving detailed reasons.

3. The principal submission of Mr.Kulkarni, learned Counsel appearing for the appellant, is that the respondents will be required to disclose their defence in the Suit which will embarrass them in the criminal trial. As far as the proceedings under Section 138 of the Negotiable Instruments Act are concerned, they are enabling proceedings. That section has been brought in to provide for punishment since large number of cheques were being dishonoured and the Suits were taking their own time. Essentially the cause of action in all such matters is a civil cause. This position is strengthened in view of the addition of Sections 143 to 147 in the Negotiable Instruments Act. That being so, there is no question of any embarrassment being caused by disclosing the defence in the civil proceedings.

4. The judgments cited by Mr.Kulkarni, learned Counsel appearing for the appellant, are in cases of defamation and wrongful confinement. . They have certainly no bearing on the present matter. Even in departmental proceedings, actions against the employees where there are allegations such as that of assault, the Apex Court has held

that it is open to the departmental Authorities to proceed with the departmental actions when the criminal proceedings are not yet decided. That, of course, is to be decided on facts of each and every case, though they are cases essentially of a criminal character. This cause being essentially a civil cause, there is no question of any embarrassment being caused.

5. In the circumstances, the Appeal is dismissed.

6. Time to file a reply to the Summons for Judgment is extended by two weeks.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)